IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 296 (SS) OF 2006

Laxman Singh,
R/o Village Daur,
Patti Dhamandasyun,
Tehri Garhwal. .....Petitioner.

Versus

1. The District Magistrate, Tehri Garhwal.
2. Sub Divisional Magistrate, Narendra Nagar, District Tehri Garhwal. .....Respondents.

Sri Chetan Joshi, Advocate for the petitioner.
Learned Standing Counsel for the State.

Dated: 07.03.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the termination order dated 24.02.2006 (Annexure IV) and advertisement dated 28.12.2005 (Annexure V). Further petitioner has sought a mandamus restraining the respondents not to interfere in the working of the petitioner.

2. Brief facts giving rise to the present writ petition are that on 29th June, 1994 a selection committee was formed and the selection committee selected 13 persons for appointment on Class IV post in the Land Record Establishment and also for the Nazarat. Amongst 13 persons, the petitioner was at Serial No. 3. The respondents having failed to make any appointment in pursuance of the recommendation of the selection committee in spite of the fact that the petitioner approached the respondents. According to the petitioner, the candidates, who were at Serial No. 5, 8 and 10 were given appointment and they are working

but the petitioners who was placed at Serial No. 3 was not given appointment. A Writ Petition was preferred being Writ Petition No. 1385 of 1995 (ss) by Sri Sita Ram, who was at Serial No. 6, where order was to the following effect:-

"In the circumstance, the writ petition deserves and is allowed to the extent that if any appointment is already made from the select list mentioned in annexure No. 1 of a person who is belong to the petitioner who is shown at Sl. No. 6 then the appointment letter to the petitioner shall be issued according to the rules within 30 days of production of certified copy of this order before the District Magistrate, Tehri."

A writ of mandamus is issued directing the respondents that if the petitioner stands at Serial No. 3 in the select list, the respondent shall consider him for issuance of the appointment letter in accordance with the Rule within a period of one month after filing of the certified copy of the order.

Writ petition is allowed. No order as to costs."

In pursuance of the said order, the petitioner was given the appointment on 21st November, 2005. A perusal of the order passed by this Court in the aforesaid writ petition shown that the order was passed for considering the appointment on the basis of select list prepared by the respondents.

Respondents issued the appointment letters on the basis of the select list prepared in the year, 1994.

The petitioner, at present, has challenged the termination order dated 24th February, 2006 passed under ***U.P. Temporary Government Servant (Termination of Service) Rules, 1975.*** The select list was prepared under Group 'D' Employees Rules, 1985, which provides the source of recruitment under Rule 6. The same is quoted below:-

"6. Sources of recruitment.-The sources of recruitment to the various categories of Group 'D' posts shall be as follows :

(a) Peon, Messenger, Chaukidar, ...By direct recruitment.
Mail, Farrash, Sweeper,
Waterman/Bhsti, Tindal,
Thelaman, Record-lifter and
Every other non-technical
Post.

(b) Peon-Jamadar.....By promotion from amongst
permanent peons.

(c) Daftari/Book Binder/Cylostyle Operator..By promotion from amongst qualified peons, Messengers and Farrash.

(d) Farrash Jamadar..... By promotion from amongst permanent Farrash.

(e) Sweeper Jamadar..... By promotion from amongst
permanent Sweepers.

(f) Head Mali.....By promotion from amongst
permanent Malies.

Provided that where no eligible suitable candidate is available for promotion to a particular post which is required to be filled by promotion, the post be filled by direct recruitment."

Rule 16 of the U.P. Group 'D' Employees Service Rules, 1985 relates to the Constitution of Selection Committee. The same is quoted below:-

"***16. Constitution of Selection Committee.-*** *(1) For the purpose of recruitment to any post, there shall be constitution a selection committee as follows:-*

(1) Appointing authority :

(2) An officer belonging to Scheduled Castes, Scheduled Tribes, nominated by the District Magistrate, if the appointing authority does not belong to Scheduled

Castes/Scheduled Tribes. If the appointing authority belongs to Scheduled Castes/Scheduled Tribes an officer other than belonging to Scheduled Castes/Scheduled Tribes, Minority Community & Backward class to be nominated by the District Magistrate.

(3) Two officers nominated by the appointing authority, one of whom shall be an officer belonging to minority community and other to Backwardclass. If such suitable officer is not available in his department or organization such officer shall, on the request of appointing authority, be nominate by the District Magistrate and or his failure to do so by reason of non-availability of suitable officer such officer shall be nominated by the Divisional Commissioner."

The grievance of the petitioner is that once after due vacancies a selection committee was constituted, an appropriate appointment having been made and select list was prepared, there was no reason to terminate the service of the petitioner, when in point of fact other persons who were in that list, are continuing. The procedure for selection has also been given in Rule 19 of the U.P. Group 'D' Employees Service Rules, 1985. The same is quoted below:-

"19. ***Procedure for Selection.*** *–(1) The appointing authority shall determine the number of vacancies to be filled during the Course of the year as also the number of vacancies to be reserved for the candidates belonging to the Scheduled Castes, Scheduled Tribes and other categories. The vacancies shall be notified to the Employment Exchange. The appointing authority may also invite application directly from the persons who have their names registered in the Employment Exchange. For this purpose, the appointing authority shall issue an advertisement in a local daily newspaper besides*

pasting the notice for the same on the notice board. All such applications shall be placed before the Selection Committee.

(2) When the names of both the general candidates and reserve candidates (for whom vacancies are required to be reserved under the orders of the Government) have been received by the Selection Committee it shall interview and select the candidates for various posts.

(3) In making selection the Selection Committee shall give weightage to the retrenched employees awarding marks in the following manner.

(i)	*For the first complete year*	*5 marks.*
(ii)	*For the next and every completed year of service*	*5 marks*

Provided that the maximum marks awarded to a retrenched employee under this sub-rule shall not exceed 15 marks.

(4) The number of the candidates to be selected will be larger (but not larger by more than 25 per cent) than the number of vacancies for which the selection has been made. The names in the select list shall be arranged according to the marks awarded at the interview."

Further grievance of the petitioner is that once the procedure for selection having been completed, there was no occasion to terminate the service of the petitioner without assigning any reason.

A writ of certiorari is issued quashing the order-dated 24.02.2004 (Annexure IV to the writ petition). The matter is sent back to the authorities concerned to pass appropriate orders considering the representation of the petitioner. It will be open for the respondents to pass order afresh after giving an opportunity to the petitioner and if the respondents come to the conclusion that in any reason termination is required, he shall give the reasons for doing so.

Subject to the aforesaid, writ petition is allowed. No. order as to costs.

(Rajesh Tandon, J.)

07.03.2006
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